

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Tsui	Team: Squad #15	CCRB Case #: 202101293	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 02/28/2021 10:00 PM	Location of Incident: Foch Boulevard and Guy Brewer Boulevard	Precinct: 113	18 Mo. SOL 8/28/2022	EO SOL 8/28/2022	
Date/Time CV Reported Mon, 03/01/2021 10:43 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 03/01/2021 10:43 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Frank Gagnon	19242	958610	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Damien Lombardo	08867	957778	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Frank Gagnon	Force: Police Officer Frank Gagnon used physical force against § 87(2)(b)	
B. PO Frank Gagnon	Abuse: Police Officer Frank Gagnon threatened to arrest § 87(2)(b)	
C. PO Frank Gagnon	Off. Language: Police Officer Frank Gagnon made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
D. PO Frank Gagnon	Abuse: Police Officer Frank Gagnon made a sexually suggestive remark to § 87(2)(b)	

Case Summary

On March 1, 2021, § 87(2)(b) filed this complaint with the CCRB on the phone.

On February 28, 2021, at approximately 10:00 PM in the vicinity of Foch Boulevard and Guy Brewer Boulevard in Queens, § 87(2)(b) doubled parked his white 2015 Dodge Challenger with tinted windows in front of a grocery store. § 87(2)(b) exited The Dodge Challenger and entered the grocery store to buy a drink. The Dodge Challenger was running unattended. Police Officer Frank Gagnon and Police Officer Damien Lombardo of the 113 Precinct, were on vehicle patrol, and observed the Dodge Challenger. The officers exited their vehicle and approached the Dodge Challenger. The officers checked to see if the vehicle was locked. PO Lombardo pulled on the driver side door latch. § 87(2)(b) approached the Dodge Challenger and asked what the officers were doing. PO Lombardo told § 87(2)(b) that he wanted to make sure that the vehicle was locked. The police officers asked § 87(2)(b) for his identification. § 87(2)(b) told the officers that the Dodge Challenger belong to him. § 87(2)(b) told the police officers that he did not have identifying documents on his person. The officers asked § 87(2)(b) to provide his name and date of birth verbally. § 87(2)(b) refused. The officers disputed with § 87(2)(b) § 87(2)(b) walked away from the officers. At this time, PO Lombardo stuck his hand out in front § 87(2)(b) (Allegation A: Force-Physical Force, § 87(2)(g) PO Gagnon threatened to arrest § 87(2)(b) if he did not cooperate (Allegation B: Abuse of Authority-Threat of Arrest, § 87(2)(g) PO Gagnon and § 87(2)(b) and stood face to face. PO Lombardo asked § 87(2)(b) if he wanted to kiss him (Allegation C: Offensive Language-Sexual Orientation, § 87(2)(g) and Allegation D: Abuse of Authority-Sexual Harassment, Verbal, § 87(2)(g) § 87(2)(b) was issued Summons #§ 87(2)(b) for double parking by PO Gagnon, Summons #§ 87(2)(b) for unattended running vehicle by PO Lombardo. There were no arrests made as of result of this incident.

Body Worn Camera (BWC) video footage was obtained by the investigation (Board Review 1). It is attached to IA#23 and summarized in IA #28 (Board Review 2), and IA #30-33 (Board Review 3-6).

Findings and Recommendations

Allegation (A) Force: Police Officer Frank Gagnon used physical force against § 87(2)(b).

Allegation (B) Abuse of Authority: Police Officer Frank Gagnon threatened to arrest § 87(2)(b).

It is undisputed that on February 28, 2021 at approximately 10:00 PM, in the vicinity of Foch Boulevard and Guy Brewer Boulevard in Queens, § 87(2)(b) parked his white Dodge Challenger with tinted windows on the street. § 87(2)(b) left the engine on idle and exited the Dodge Challenger. PO Gagnon and PO Lombardo approached the Dodge Challenger. PO Lombardo checked to see if the vehicle was locked by pulling on the driver side door latch. When § 87(2)(b) returned to his vehicle, § 87(2)(b) spoke with PO Gagnon and PO Lombardo. § 87(2)(b) told the officers that the vehicle belonged to him. The police officers requested for § 87(2)(b)'s identifying documents. § 87(2)(b) did not have the requested documents. PO Gagnon asked § 87(2)(b) to give his pedigree information verbally. § 87(2)(b) refused.

According to § 87(2)(b)'s CCRB testimony (Board Review 9), § 87(2)(b) observed PO Lombardo pull on his driver side door latch multiple times. The driver door was locked. PO Lombardo asked if the Dodge Challenger belonged to § 87(2)(b) § 87(2)(b) said yes. § 87(2)(b)

§ 87(2)(b) asked PO Lombardo what he was doing. PO Lombardo told § 87(2)(b) that he checked his door to make sure the Dodge Challenger was lock and secured. § 87(2)(b) argued with PO Lombardo about the officer pulling on his door latch. § 87(2)(b) disputed with PO Lombardo but did not recall the conversation. At this time, PO Gagnon exited his officer's patrol vehicle and approached PO Lombardo and § 87(2)(b)'s left side. The officers formed a barrier around § 87(2)(b). § 87(2)(b) attempted to walk towards the convenience store next to the street. PO Gagnon grabbed the front of § 87(2)(b)'s shirt and left hand. PO Gagnon had both hands-on § 87(2)(b). PO Gagnon pulled § 87(2)(b) back to the front of the Dodge Challenger. PO Gagnon asked § 87(2)(b) to provide his ID, phone number, middle name, and social security. § 87(2)(b) refused to provide his middle name and social security number. PO Gagnon told § 87(2)(b) that he will place him in handcuffs if he did not provide the requested information.

According to PO Gagnon's CCRB testimony (Board Review 7), on February 28, 2021, at approximately 10:10 AM, in the vicinity of Foch Boulevard and Guy Brewer Boulevard, PO Gagnon and his partner, PO Lombardo were assigned to overtime vehicle patrol of the 113 Precinct. The officers observed a white Dodge Challenger with tinted windows double parked next to a legal parking spot. The officers heard the Dodge Challenger's engine run. The police officers exited their vehicle and approached the Dodge Challenger on foot. The officers intended to knock on the window and to speak with the driver. At this time, § 87(2)(b) approached the Dodge Challenger. § 87(2)(b) stated that the Dodge Challenger belonged to him. PO Gagnon requested for § 87(2)(b)'s driver's license, registration, and insurance to issue him summonses for illegally double parking and having his vehicle run unattended. § 87(2)(b) told PO Gagnon and PO Lombardo that he did not have the requested document. PO Gagnon requested § 87(2)(b) for his documents at least twice. On the first time, § 87(2)(b) told PO Gagnon that he did not need the documents requested and that he did not have the requested document on his person or in his vehicle. The officers asked for § 87(2)(b) for his pedigree information verbally. § 87(2)(b) muttered a sentence quietly, and then incorrectly stated his pedigree information a "handful of times". The officers searched the information provided by § 87(2)(b) on their mobile DMV database. The officers' search yielded negative results. Each time, § 87(2)(b) provided PO Gagnon with a one to two letter misspelling of his name or an incorrect number for his date of birth. PO Gagnon told § 87(2)(b) that lying about his pedigree information was a penal law misdemeanor and that if § 87(2)(b) did not provide his pedigree information, he would be arrested.

Approximately three minutes after speaking with PO Gagnon, § 87(2)(b) attempted to walk away from the officer. PO Gagnon positioned himself in front of § 87(2)(b) and stuck his one arm forward. PO Gagnon wanted to prevent § 87(2)(b) from walking past him. PO Gagnon instructed § 87(2)(b) to return to him. § 87(2)(b) complied. PO Gagnon was not sure if § 87(2)(b) walked into his arm or if his arm made any physical contact with § 87(2)(b). PO Gagnon did not think he made physical contact with § 87(2)(b). PO Gagnon requested a patrol supervisor to respond to the scene. SGT Steven Sprague and PO Brandon Copertino of the 113 Precinct arrived at the incident location in a patrol vehicle. PO Gagnon and SGT Sprague approached § 87(2)(b). PO Barrington Farquharson of the 113 also arrived. PO Gagnon offered to give § 87(2)(b) one final opportunity to provide his pedigree information. § 87(2)(b) provided his information. The officers searched § 87(2)(b)'s provided information on their mobile database. The search yielded a driver's license for § 87(2)(b).

According to PO Gagnon's BWC video (Board Review 2), at the internal timestamp, of 02:56:10, PO Gagnon requests for § 87(2)(b)'s drivers' licenses. § 87(2)(b) asks PO Gagnon why he needed his driver's license. PO Gagnon tells § 87(2)(b) that it was because he drove a vehicle. PO Lombardo asks § 87(2)(b) for his first name. § 87(2)(b) provides his first name to the officer but refuses to spell it out for him. PO Lombardo tells § 87(2)(b) that they approached his

vehicle because he left it running unattended. At 02:57:07 § 87(2)(b) repeats his first name but states that he will not provide any more of his information to the police officers. PO Lombardo asks for § 87(2)(b)'s date of birth. § 87(2)(b) provides his date of birth to PO Lombardo. At the internal timestamp of 02:57:30 PO Gagnon tells § 87(2)(b) that if he did not give his information to PO Lombardo, he will be arrested. At 02:57:40, § 87(2)(b) tells PO Lombardo that his last name is spelled "Grayson". At the internal timestamp of 02:58:08, § 87(2)(b) walks a few steps away from the Dodge Challenger. PO Gagnon takes his thumb and index finger and tugs lightly on the front side of § 87(2)(b)'s sweater, in the direction of the Dodge Challenger. § 87(2)(b) walks back to the Dodge Challenger. § 87(2)(b) tells PO Gagnon to not touch him. PO Gagnon instructs § 87(2)(b) to not walk away, and he will be arrested if he "play that game." PO Gagnon tells § 87(2)(b) that he is stopped and detained. PO Lombardo tells § 87(2)(b) that his information does not come up. At the internal timestamp of 03:06:47, PO Gagnon, PO Lombardo and SGT Sprague request for § 87(2)(b)'s information again. SGT Sprague asks § 87(2)(b) for his middle name. § 87(2)(b) tells the officer that he did not have a middle name. At the internal time stamp of 03:07:37 SGT Sprague asks § 87(2)(b) if he had a middle initial. At first § 87(2)(b) replies with no, but quickly tells the officers that his middle name is § 87(2)(b).

According to PO Lombardo's BWC (Board Review 3), at the internal timestamp of 02:58:06, § 87(2)(b) walks away from PO Gagnon. PO Gagnon follows § 87(2)(b) walks back to the Dodge Challenger and tells PO Gagnon to not put his hands on him. PO Gagnon tells § 87(2)(b) to not walk away from him and that he is being stopped and detained. PO Gagnon tells § 87(2)(b) that if he "played that game" he will be arrested.

NY CLS Penal Section 190.23 (Board Review 8) states that a person is guilty of false personation when after being informed of the consequences of such act, he or she knowingly misrepresents his or her actual name, date of birth or address to a police officer or peace officer with intent to prevent such police officer or peace officer from ascertaining such information.

The investigation determined that although PO Gagnon did make physical contact with § 87(2)(b) the contact was brief and did not arise to a level of physical force misconduct. Given that § 87(2)(b) was considered detained and that he walked away from PO Gagnon during the officer's questioning for his pedigree information, PO Gagnon acted reasonably when he gently tugged the front of § 87(2)(b)'s sweater, and guided him back to his original position. PO Gagnon therefore prevented § 87(2)(b) from walking away. Furthermore, § 87(2)(b) did not fall nor sustained any injuries as of result of the brief physical contact. § 87(2)(g)

By PO Gagnon's own admission, PO Gagnon threatened to arrest § 87(2)(b) PO Gagnon was justified in threatening to arrest § 87(2)(b) because he had refused to correctly provide his pedigree information verbally, despite multiple requests from PO Gagnon and his partner. Prior to the arrival of SGT Sprague, § 87(2)(b) knowing agreed to a misspelling of his name to PO Lombardo. When SGT Sprague arrived; § 87(2)(b) initially denied having a middle name. § 87(2)(b) later admitted that his middle name was § 87(2)(b) to the officers when another DMV check was conducted for him. § 87(2)(b) purposely misrepresented himself and mislead the officers by providing them with his partial or incomplete pedigree information. Given the above, it was reasonable for PO Gagnon to threaten to arrest § 87(2)(b) for false personation. § 87(2)(g)

Allegation (C) Offensive Language: Police Officer Frank Gagnon made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Frank Gagnon made a sexually suggestive

remark to § 87(2)(b)

It is undisputed that PO Gagnon asked § 87(2)(b) if he was going to kiss him when both of them stood face to face in close proximity.

According to § 87(2)(b)'s CCRB testimony (Board Review 9), after PO Gagnon informed § 87(2)(b) that he could be handcuffed for refusing to provide his middle name and social security number, PO Gagnon stood face to face with § 87(2)(b). PO Gagnon asked § 87(2)(b) "Do you want a kiss?" § 87(2)(b) interpreted that as a homophobic remark towards himself and that he felt that PO Gagnon insinuated that he was gay.

According to PO Gagnon's CCRB testimony (Board Review 7), PO Gagnon informed § 87(2)(b) that he was considered detained, and PO Gagnon informed him that he was not free to leave. § 87(2)(b) did not wear a face mask. § 87(2)(b) smoked a cigarette. § 87(2)(b) leaned in less than two inches away from PO Gagnon's face, puffed his lips, and blew cigarette smoke at PO Gagnon's face. PO Gagnon did not know what § 87(2)(b) wanted to do at that moment. PO Gagnon was under the impression that § 87(2)(b) was going to kiss the outside of PO Gagnon's face mask. PO Gagnon stated that he is asthmatic, and that he was concerned for the Covid-19 virus. PO Gagnon asked § 87(2)(b) if "Are you going to kiss me?" § 87(2)(b) asked PO Gagnon, "Are you going to fucking kiss me?" PO Gagnon did not make any comments about or alluded to § 87(2)(b)'s sexual orientation.

According to PO Gagnon's BWC video footage (Board Review 2), at 02:58:23 PO Gagnon and § 87(2)(b) are standing face to face by the Dodge Challenger. § 87(2)(b) sways slightly forward and then towards PO Gagnon. § 87(2)(b) puffs his cigarette. PO Gagnon asks § 87(2)(b) if he wants to kiss him.

According to PO Lombardo's BWC (Board Review 3), at the internal timestamp of 02:58:21, § 87(2)(b) and PO Gagnon stand almost face to face. § 87(2)(b) puffs his cigarette and blows smoke on PO Gagnon's face. PO Gagnon asks § 87(2)(b) if § 87(2)(b) will kiss him.

NYPD Patrol Guide Procedure 203-09 (Board Review 2) states that police officers must be courteous and respectful when dealing with civilians.

NYPD Patrol Guide Section 203-10 (Board Review 3) states that using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. a. Members shall address the public using pronouns, titles of respect, and preferred name appropriate to the individual's gender identity/expression as expressed by the individual. The term "gender" shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

§ 87(2)(b), § 87(2)(g) Although PO Gagnon reasoned that his question to § 87(2)(b) on whether § 87(2)(b) was going to kiss him was that of genuine inquiry, a police officer should not ask or request any intimate gesture from a civilian. A review of PO Gagnon and PO Lombardo's BWC video footage showed PO Gagnon and § 87(2)(b) verbal confrontation, standing very close to one another. From the PO Gagnon's and PO Lombardo's BWC video footage, although no slurs base upon sexual orientation were made by PO Gagnon, it was clear that PO Gagnon's question to § 87(2)(b) was intended to be mockery in nature. § 87(2)(g)

Civilian and Officer CCRB Histories

This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).

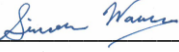
- PO Gagnon has been a member of service for six years and has been a subject in four CCRB complaints and ten allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint could not be mediated.
- § 87(2)(b)
- § 87(2)(b) did not have a claim with the City of New York (Board Review 13).

Squad: 15

Investigator:	<u>Jeffrey Tsui</u>	<u>INV Jeffrey Tsui</u>	<u>5/13/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>10/15/21</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date